(3)

No. 90-562

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

MONICA GETZ,

Petitioner,

vs.

STANLEY GETZ,

Respondent.

PETITIONER'S REPLY BRIEF

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PETITIONER'S REPLY BRIEF

Petitioner Monica Getz submits this reply to the brief of respondent, Stanley Getz, dated October 31, 1990, filed in opposition to her petition for certiorari to the Court of Appeals of the State of New York.

Respondent's Counterstatement of the Case

Respondent's long recital of the procedural delays and expenses in this protracted matrimonial litigation (Resp. Br. pp. 2-14) confirms petitioner's argument that matrimonial proceedings should

not be shunted to the commercial courts of New York State, where interminable procedural maneuverings are available to allow the spouse with the deepest pocket to bring the weaker spouse to her knees.

We will not burden the Court with a detailed refutation of the respondent's attempts to place the responsibility for delays on petitioner. That is unnecessary to establish the underlying point which is that *all* of the delays and expense of this type of proceeding deny equal protection to women as a class. The key fact on this issue is respondent's concession that when this matter was in the Family Court back in 1982:

> The parties entered into an "Agreement Toward Reconciliation" on February 11, 1982.
>
> (Resp. Br. p. 7)

That was *eight years ago*. The marital dispute at that point was well on its way to resolution. Then the *husband* decided to circumvent the agreement, which he did simply by filing this divorce action, thereby aborting the agreement and ousting the Family Court of jurisdiction.[1] That is when the delays and confrontational litigation began, spreading over eight years and resulting in the wife's liability for legal fees which will literally eat up the bulk of the proceeds from the sale of the family home if and when that occurs. That ability to force any wife into such a grotesque procedural morass is exactly why this petition should be granted.

* * *

A few particulars in the respondent's counterstatement of the case merit specific reply:

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[1] Respondent's ability under New York law to transfer the marital dispute to a trial court of general jurisdiction and thereby defeat the jurisdiction of the specialized Family Court is the principal ground for petitioner's claim of denial of equal protection.

Petitioner's Financial Condition

You cannot eat real estate. The family home at Shadowbrook sounds impressive on paper but is an economic disaster in reality. "Cash flow" is the key to economic well-being. A wife, like anyone else, needs *cash* to go to a grocery store, to pay property taxes, to make repairs. Shadowbrook is not cash — it is a cash sponge. It demands cash for bare upkeep, and the cash is simply not there for anything else.[2] Mrs. Getz herself lives from hand to mouth.

The so-called "guest houses" referred to in respondent's brief are a garage and a caretaker's house, both rented out to tenants in order to provide income to cover insurance, maintenance and tax payments. The buildings are in violation of the local building code and Mrs. Getz is harried by building inspectors because she cannot pay the amounts necessary to comply with local ordinances.

Mrs. Getz operates the main house as a "bed-and-breakfast" but for approximately two years the furnace was broken and inoperable so that no one rented rooms except during the non-heating months. Even after attempted repair in December 1989, the heating system remains inadequate and unreliable.

What is missing in the wife's situation is support from respondent. While he gives concerts around the world at $25,000-plus per appearance, the wife receives not one cent toward the upkeep of the property which she strives to keep going as a family base for their children and grandchildren.

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[2] The "yearly income" of $133,000 asserted at page 6 of respondent's brief is mythical. The rental income from Shadowbrook *must* be applied to pay expenses, insurance and repairs under the trial court's decree. The royalty income must pay for current legal disbursements (such as the printing of this Reply). What remains is barely enough for subsistence. Monica Getz's financial distress is genuine.

Her 50% interest in the property is a fiction. She has over $600,000 in unpaid legal bills which will become liens on the proceeds from its sale.[3] The *lawyers* are the only ones who benefit from Shadowbrook. Under these circumstances, it is an albatross for petitioner. She cannot sell the property because it is under court order, and she cannot gain income from the property because of its present deteriorated condition. She is an economic prisoner, made so by the excesses of this litigation and the unequal workings of New York's divorce laws.

Respondent's Health

One cannot help but feel sympathy for anyone suffering from liver cancer, even when precipitated by alcohol, heroin and cocaine abuse, but the husband's state of health in this case cannot excuse his misuse of the unfair divorce laws of New York State to drive his wife to the wall financially, to destroy the family homestead, and to utilize judicial process to carry on a personal vendetta.[4] The husband continues to earn a six figure income and live a Malibu lifestyle, while the wife must fight for her survival against a legal juggernaut unleashed by his attorneys.

Status of Appeal

Respondent has jumbled together a whole series of petitioner's futile appeals in a transparent attempt to confuse the status of this case. The simple fact is that this petition involves the direct appeal from the final judgment in this case, which is printed as Appendix 6 to respondent's brief (Resp. Br. pp. A-7 - A-10). There is *no other appeal* pending from that judgment.

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[3] In addition, respondent has reportedly incurred legal bills of over $700,000 in this action, and by bringing the Supreme Court divorce proceeding, respondent has impoverished the Getz family.

[4] Respondent's brief concedes that after six years of these legal proceedings, a psychologist's report found that Mrs. Getz was suffering from "a probable chronic state of frustration, disenchantment, [and] stress." (Resp. Br. p. 13). Small wonder.

We readily acknowledge that petitioner's attempt to appeal from the original judgment of divorce (Appendix 1; Resp. Br. pp. A-1 - A-2) was dismissed because petitioner was unable to file the record on appeal, but what respondent fails to note is that the reason she was unable to file the record is that the official court reporter, paid $9,000 for the transcript in advance, failed to deliver a complete and accurate trial transcript.

It is also true that the trial judge subsequently denied a motion for a new trial *based on newly discovered evidence*, and that an appeal from that denial is pending. But that does not affect the finality of the judgment involved here, nor the legal grounds upon which it was based. This proceeding presents the one and only opportunity to address the issues presented in the petition for certiorari.

POINT I

PETITIONER DOES NOT CHALLENGE NEW YORK'S EQUITABLE DISTRIBUTION STATUTE, BUT NEW YORK'S COMMERCIAL FORUM FOR DIVORCE PROCEEDINGS

The first of respondent's "Reasons Why the Writ Should be Denied" raises new legal issues which can be disposed of briefly in this reply.

Respondent mischaracterizes the petition as an "attack on the constitutionality" of New York's Equitable Distribution Statute and counters that the

> Equitable Distribution Law. . . [has] removed the sexual discrimination that was express or implied in New York statutes relating to alimony and support. (Resp. Br. p. 15)

This assertion is not only questionable (see *infra*), but it also misses the entire point of the petition that "New York's present statute authorizing husbands to initiate plenary divorce proceedings in the state's principal commercial court [Domestic Relations Law § 170] is a denial of due process and equal protection to women." (Petition, p. 11).

Domestic Relations Law § 170 has an intentionally disproportionate and discriminatory impact on women as a class who, because of the social, political, and economic burdens historically placed upon them, cannot afford the ruinously high cost of seeking justice in New York's State Supreme Court – the principal court for commercial disputes.

Petitioner does not attack the equitable distribution guidelines themselves but instead challenges the fact that, *to the clearly foreseeable detriment of women*, these guidelines (as well as all other substantive aspects of New York's divorce law) are applied in the "arena of full-blown commercial litigation" – a court of general jurisdiction where the disparity in resources between men and women puts women at a severe disadvantage, amounting to a *denial* of equal protection and due process.

Furthermore, respondent's argument that the Equitable Distribution Law, as applied, has not resulted in hardship to women is directly contradicted by findings in the Report of the "New York Task Force on Women in the Courts," set forth in the petition. (Petition, pp. 12-14). The report recognized that "[t]he manner in which judges distribute a family's assets and income upon divorce profoundly affects many women's economic welfare." Despite this fact, the Task Force expressly found that "many lower court judges have demonstrated a predisposition not to recognize or to minimize the contribution of the homemaker wife to the marital economic partnership in distributing marital property." Thus, though the words of the New York statute may be gender neutral, its effects are terribly burdensome on, and discriminatory toward, women.

POINT II

RESPONDENT HAS FOCUSED ON THE WRONG APPEAL

Respondent's brief (Point II, p. 16) incorrectly addresses the appeal from the judgment granting divorce of October 7, 1987, which was dismissed because there was no complete record on appeal available. This petition, on the other hand, challenges the due process and equal protection deprivations caused by a

different appeal — the Appellate Division's summary dismissal dated December 7, 1989 of Mrs. Getz's appeal from the final judgment of March 10, 1989 awarding equitable distribution and dismissing her recrimination defense, followed by the New York State Court of Appeals' order of July 2, 1990 denying petitioner's motion for leave to appeal that summary dismissal.

POINT III

THE PETITION ANTICIPATED ARGUMENTS IN POINT III (pp. 17-18) OF RESPONDENT'S BRIEF

We respectfully refer the Court to pages 21 to 24 of the Petition where we address each of the arguments in Point III of Respondent's Brief.

POINT IV

FINALITY OF DIVORCE DECREE

Respondent's repeated claim that this petition does not relate to a final judgment in his divorce action is incorrect. The March 1989 judgment sought to be reviewed does not contemplate further discretionary action at the trial level. Its finality is beyond dispute.

The presently pending appeal in the Appellate Division in New York is from the denial of a motion for a new trial *based on newly discovered evidence.* It is not an appeal in the main action itself. It is an independent post-judgment proceeding which does not in any way affect the finality of the judgment which it seeks to set aside. If in the remote chance it should prove successful, it will not undo the denial of constitutional rights which is the basis for this petition, but will merely require a retrial based on the false testimony of one of the trial witnesses. The unfair legal principles which this petition attacks will remain undisturbed *unless this Court grants certiorari. Cox Broadcasting v. Cohn*, 420 U.S. 469, 480 (1985); *NAACP v. Clairborne Hardware Co.*, 458 U.S. 886, 907, n. 2 (1982) (First Amendment ruling deemed final, despite remand for a recomputation of damages).

CONCLUSION

Accordingly, we pray that the petition for certiorari be granted.

Dated: New York, New York
November 7, 1990

Respectfully submitted,

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